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Outfalls

Discussion on outfalls

An outfall is any pipe or structure that discharges treated or untreated industrial or municipal wastewater or stormwater which directly or indirectly impacts state-owned aquatic lands. Outfalls are one form of linear project, of utility line, and of nonwater-dependent use. SEE ALSO: Linear projects; Utility lines; Nonwater-dependent uses.

Outfalls are one of the most serious threats to environmental quality on state-owned aquatic lands. Outfall discharges commonly contain toxic materials that accumulate in the sediments of tidelands, shorelands, and bedlands. These discharges may also contain non-toxic but still harmful elements such as excessive nutrient loads or a different temperature or salinity than receiving waters. Outfall discharges can cause short- and long-term habitat damage and can create risks to humans and natural resources. Toxic materials especially can create financial liability to the state.

Examples of water-dependent uses often affected by outfalls include:

- Commercial and recreational shellfish harvesting.
- Commercial and recreational bottom fishing.
- Aquaculture.
- Swimming or other public access and recreational activities.

SEE ALSO: Water-dependent uses; Shellfish; Aquaculture; Public use and access.

Because of the potentially severe consequences of outfall discharges on aquatic resources, the department needs to closely scrutinize outfalls that occupy state-owned aquatic lands, and also, whenever possible, those that discharge onto these lands even if the outfall is located away from them. This scrutiny must include careful consideration of alternative means of managing outfalls and similar point sources of pollution.

The department will always seek to reduce the adverse environmental impacts of outfall discharges and other point sources to state-owned aquatic lands, and eventually to eliminate all such impacts. This does not necessarily require the removal of outfalls from state-owned aquatic lands, if the adverse environmental impacts of these outfalls can be sufficiently reduced or eliminated.

For existing outfalls located on state-owned aquatic lands, the department should take all opportunities to reduce or eliminate adverse environmental impacts. For outfalls proposed to be located on state-owned aquatic lands, the department will require all appropriate steps to prevent or minimize adverse environmental impacts. For all outfalls and other point sources, regardless of location, the department should seek to convince and assist regulatory agencies, local governments, and outfall users to responsibly reduce, and eventually eliminate, adverse environmental impacts to state-owned aquatic lands from sources under their control.

OUTFALLS: ALTERNATIVES TO OUTFALLS

Discussion on outfalls: alternatives to outfalls

Because of the potentially serious threats posed by outfalls to environmental quality on state-owned aquatic lands, the department will require consideration of alternative means of reducing or eliminating adverse environmental impacts from outfalls to state-owned aquatic lands. Review of a proposed

or renewing outfall must include, through the SEPA or NEPA process or other processes, evaluation of alternatives which may result in lesser or no significant adverse environmental impacts. These alternatives may include means to reduce or eliminate toxic chemicals or other environmentally harmful elements in discharges, or to avoid entirely the need for discharging onto state-owned aquatic lands.

Harmful elements in discharges might be reduced or eliminated through more thorough treatment before discharging, altering or eliminating some production processes, reducing net effluent volumes, or more aggressively separating waste and reusable materials. Possible alternatives which might reduce or avoid entirely the need for outfalls onto aquatic lands include increased water conservation; increased use of infiltration galleries; reuse of waste water and storm water as industrial coolant water, aquifer regeneration, and use of treated water for golf courses, other non-food irrigation, toilets in large office or commercial buildings, and other non-drinking purposes.

This analysis must consider all such alternatives which are scientifically valid and consistent with applicable laws and regulations, and must consider impacts of the outfall for its entire potential existence and operation and for as long as impacts may persist. Where hydrogeologically, environmentally, and economically feasible, the department's preferred alternative will be upland disposal.

OUTFALLS: REGULATORY ISSUES

Discussion on outfalls: regulatory issues

The department should always seek to coordinate with federal, state, and local agencies regarding their outfall permitting and planning, and especially to seek opportunities to address its interests regarding outfalls early in these efforts. It is essential that the department learn about outfall

proposals and notify regulatory agencies and outfall proponents of its interest in a proposed outfall, as well as in planning related to outfalls, at the earliest possible time in the process. SEE ALSO: Regulatory agencies and permits.

Staff should work closely with appropriate SEPA and NEPA staff to ensure that notices are identified and that preliminary comments are provided at the earliest possible time in the process. Also, staff must maintain close contact with other agencies and local governments responsible for or knowledgeable about in-water construction permits, JARPA applications, NPDES and wastewater permits, hydraulic project permits, salmon habitat restoration, public works proposals, critical area ordinances, and similar efforts which may relate to outfalls. Staff should also monitor revisions of local comprehensive plans, shoreline management master programs, and similar planning processes which may lead to increased wastewater or stormwater discharge, as well as plans for industrial sites or port expansions. This effort should help reduce conflicts with other interested parties, as well as ensure increased protection for the natural resources managed by the department. SEE ALSO: State Environmental Policy Act; National Environmental Policy Act; Aquatic land use planning.

To properly address outfalls, the land manager or the lead staff for the department on the outfall must coordinate with many other agencies on Section 404/401 permits, Coastal Zone Management consistency determinations, shoreline substantial development permits, National Pollution Discharge Elimination System permits, water right decisions and similar actions. Ideally, staff should begin coordinating with the Department of Ecology at least 18 months before an existing NPDES permit is up for review. In all cases, the department is committed to meeting the Department of Ecology's watershed-based cycle for reviewing NPDES permits.

The department should coordinate with the Department of Ecology (or the Environmental Protection Agency, regarding

federal facilities) to obtain and analyze information from monitoring, audits or other reviews relevant to an outfall. The department will consider participating in EPA and Ecology compliance inspections, or contract with them to review compliance with the department's proprietary conditions.

If, when in the field, staff identify potential regulatory violations which may affect any state-owned aquatic lands, they must bring these to the immediate attention of the appropriate regulatory staff. Immediate notification and documentation is important to protect the environment and for later review of outfall authorizations, including compliance with regulatory permits and the department's easements. If possible, staff should conduct a joint inspection with regulatory staff. If not possible, a formal request for the regulatory agency inspection should be submitted. Copies of such requests and the results of inspections should be forwarded to the Division.

OUTFALLS: RENT

RCW 79.90.465: Definitions.

(10) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

RCW 79.90.470 Aquatic lands -- Use for public utility lines -- Use for public parks or public recreation purposes -- Lease of tidelands in front of public parks.

The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted without charge by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. The

department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission.

Discussion on outfalls: rent

Government entities will receive easements for outfalls free of charge, as long as they meet the same standards for being installed in the first place. The easement still must include terms to provide for navigation and commerce, ensure environmental protection, and provide for the department's other statutory obligations and the public benefits of state-owned aquatic lands. Note that a “public utility line” is granted a free easement only if it is actually owned by a government; that is, lines that serve the general public but are owned by a private company require full payment. SEE ALSO: Utility lines.

Rent for a private outfall will be charged as for other nonwater-dependent uses of state-owned aquatic lands. Rent should be charged for any and all state-owned aquatic lands affected by the outfall, including any necessary mixing zone or other lands which are encumbered by the discharge so that other current or potential uses are restricted or eliminated. SEE ALSO: Nonwater-dependent uses.

The department may provide financial incentives if an outfall proponent voluntarily reduces the impacts of an outfall significantly below all applicable standards — for example, by providing zero discharge of bioaccumulative chemicals of concern. Final determination of rents, payments, costs and other values may be negotiated between the department and the outfall proponent. All such values must still be consistent with the goal of gaining full value for the public, but some or all of that value may take the form of environmental benefits which are in addition to those required by any applicable regulatory standards.

OUTFALLS: REVIEW AND ANALYSIS OF OUTFALLS

Discussion on outfalls: review and analysis of outfalls

This discussion of outfall reviews and analysis is in addition to the environmental review and analysis for all uses of state-owned aquatic lands. SEE ALSO: Environmental protection.

The department will prioritize the review of new and renewing use authorizations for outfalls based on the degree of risk of the discharge to state-owned aquatic lands. For existing or proposed outfalls which create higher environmental risks to state-owned aquatic lands, the department will require a greater level of review and analysis before granting authorization and will impose stronger conditions on that authorization to manage or minimize the risks.

Examples of outfalls which should be viewed as creating a higher risk for environmental damage include those outfalls, or operations which discharge through an outfall, that:

- Discharge untreated or unknown effluent.
- Have potential to discharge toxic chemicals, bioaccumulative chemicals of concern, or polyaromatic hydrocarbons.
- Have a higher potential to disturb native habitat and species, reduce species abundance and biodiversity, or reduce biological productivity in general.
- Have a higher potential to restrict other uses of state-owned aquatic land.

In general, the following are common examples of high risk outfalls or operations which may discharge through an outfall:

Chemical processing

Aluminum smelters

Oil refineries

Pulp and paper mills and processing

Microchip etching and other high-tech hardware manufacturing

Print shops and newspapers

Boat manufacturers and shipyards

Marinas

In general, the following are common examples of lower risk outfalls or operations which might discharge through an outfall:

Fruit or meat processors and packers which discharge only biodegradable matter

Co-generation plants

Outfalls which discharge cooling water only, without causing significant temperature or salinity changes

Operations with high quality treatment systems

Municipal sewage and stormwater facilities with old or outdated treatment systems or insufficient maintenance should be treated as high risk. If an improved treatment system is proposed in association with a new outfall, it may be low risk. Outfalls which have been abandoned, have no

necessary permits, or otherwise have no documented source should be treated as high risk to state-owned aquatic lands due to the uncertainty of their impacts.

The department should focus its resources on the review of new and soon-to-expire existing use authorizations for higher risk outfalls. In fact, the department should seek to be involved in decisions on high risk outfalls that impact state-owned aquatic lands regardless of whether the outfall itself is located on state-owned aquatic lands. Executive Management should be involved early in the deliberations on all proposed high risk outfalls – when possible, even before formal applications are made.

An environmental assessment must be completed before any outfall is authorized. To be most effective, the department must be involved in the early stages of permitting and environmental review so that concerns regarding environmental risks can be incorporated into required studies and environmental assessments. The department should also review and comment on all scoping notices related to outfalls that impact state-owned aquatic lands to help shape these environmental assessments. A proponent may use an environmental assessment generated for or by an environmental regulatory agency if the information in that assessment addresses the department's proprietary needs and the issues relevant to a use authorization. SEE ALSO: Regulatory agencies and permits.

The department should require cumulative impacts analysis when a new or renewed outfall is proposed in an area documented to have experienced high environmental stress, as determined by the department. Examples of environmental stresses include a decline of an important commercial species, increased Department of Health restrictions on commercial shellfish harvesting, changes in native aquatic fauna or flora, or fish kills. The cumulative impact analysis must be submitted to, and found acceptable by, the department prior to issuing a use authorization. The best way to assure that a cumulative impacts analysis occurs

is to coordinate early in the process with the Department of Ecology. The department can avoid criticism by voicing concerns about such issues early in the regulatory process.

The department will make the final determinations of the kind and amount of discharge from an outfall, the adverse environmental impacts caused or potentially caused by the discharge, and the significance of those impacts, as these relate to a use authorization granted by the department for the outfall. Impacts include all direct impacts and all substantially related indirect impacts resulting from discharges from the outfall. This is the case regardless of any other authorities or agencies which may make separate determinations. At the same time, the department should always seek to cooperate with federal, state and local environmental regulatory agencies to facilitate joint review of outfalls.

When necessary, the department may require impact studies. The applicant must pay all costs, including costs incurred by the department, for studies or review of outfalls, discharges, and their impacts.

OUTFALLS: USE AUTHORIZATIONS FOR OUTFALLS

Discussion on outfalls: Use authorizations for outfalls

This guidance on outfall authorizations is in addition to guidance on all use authorizations. SEE ALSO: Use authorizations.

For existing or proposed outfalls which create higher environmental risks to state-owned aquatic lands, the department will impose stronger conditions on that authorization to manage or minimize the risks. If adequate scientific data regarding the impacts of an outfall does not

exist or is uncertain, the department will be more cautious about granting authorization for that outfall and may defer or impose conditions on that authorization until such data does exist.

As a nonwater-dependent use, outfalls will not be permitted to expand or be established in new areas except in circumstances where they are compatible with water-dependent uses occurring in or planned for the area. It may be acceptable to authorize such an outfall if the impacts can be satisfactorily mitigated. When an already existing outfall is not compatible with water-dependent uses occurring in or planned for an area, the department will prioritize efforts to reduce or eliminate adverse environmental impacts from that outfall. SEE ALSO: Nonwater-dependent uses.

As with all uses of state-owned aquatic lands, the department will require mitigation for any significant adverse environmental impacts caused by an outfall, as a condition of granting a use authorization. Because of the potentially severe environmental effects of outfalls, mitigation may result in significant changes in an applicant's proposal. Mitigation must be conducted in accordance with the department's guidance on mitigation on state-owned aquatic lands. The proponent of an outfall will bear the burden of demonstrating that the impacts to the state-owned aquatic lands, including cumulative impacts, will be avoided, minimized, or otherwise effectively mitigated. SEE ALSO: Environmental protection.

Outfalls should be compatible with shoreline and substrate stability, and should avoid earthquake and slide zones, if a potential earthquake or slide would cause any additional adverse impacts from the outfall. This determination should be based on data or maps provided by the U.S. Geologic Service or other appropriate source.

Even more than for most other use authorizations, the department should require monitoring of the discharges and

impacts of all outfalls receiving a use authorization. The monitoring conditions required by a regulatory agency may be considered sufficient if they monitor the functions important to the department and meet the department's needs regarding the environmental health of the state-owned aquatic lands. The outfall proponent will be responsible for the monitoring costs. SEE ALSO: Use authorizations.

The department will review outfall proposals in light of the plans and ordinances of other agencies and local governments. A proposed outfall must be consistent with all applicable plans and ordinances.

The outfall proponent will be responsible for using best management practices, to be determined by the circumstances of each outfall. Other conditions may be required as appropriate.

The department usually will not approve a new or renewed use authorization for an outfall which causes significant adverse environmental impacts to state-owned aquatic lands which are designated as an aquatic reserve or critical area. These include aquatic reserves, broadly defined, established by the department or other agencies for the purpose of preserving or protecting environmental resources and values in a given area, and critical areas identified by local shoreline management master programs, growth management plans, or similar planning processes. SEE ALSO: Reserves, aquatic; Aquatic land use planning.

OUTFALLS: USE AUTHORIZATION TERMS

Discussion on outfalls: use authorization terms

The length of term of a use authorization for an outfall will depend on the likely impacts and risks of the outfall. SEE ALSO: Use authorizations.

A short term lease (less than five years) should be used when:

- Risks are not completely assessed or are expected to increase over time;
- The outfall proponent is under a commitment to reduce risks, and oversight is required to ensure compliance;
- The quality or quantity of the discharge is expected to change significantly in the short-term; or
- Land uses in the area of the outfall are expected to change significantly in the short-term.

A longer term lease may be used when:

- The conditions above do not apply;
- Outfall discharges and impacts are considered low risk; and
- No history of lease violations has occurred from the outfall or by the outfall proponent.

A longer term lease is up to 30 years or the life of the facility, whichever is shorter. If a facility has an expected life longer than 30 years, it may be possible to renew the lease upon expiration. However, it should be made clear to applicants receiving a longer term lease that the department's goal is to eliminate all adverse environmental impacts from discharges from all outfalls and that subsequent lease negotiations will strive to achieve that goal.

Use authorizations for new or existing outfalls must have re-opener provisions at least every ten years. The department should, whenever possible, align its re-opener clauses in these use authorizations to coincide with the time frames of regulatory processes. Use authorizations will be conditioned upon receiving progress reports from the lessee on their plans to reduce discharges, including the potential to ultimately relocate or remove the outfall altogether. If longer terms are to be issued, the lease or easement must allow for the department to reopen the lease when NPDES permits are reissued to evaluate discharges and conditions of the outfall. If, at the re-opener, the performance record for either the conditions of the use authorization or any required regulatory permit is less than satisfactory, the department may terminate the use authorization. SEE ALSO: Regulatory agencies and permits.